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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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| 09/132,593 | 08/11/98 | SAEBO | A 21440/9015 |

J. MITCHELL JONES
MEDLEN & CARROLL, LLP
220 MONTGOMERY STREET
SUITE 2200
SAN FRANCISCO CA 94104

HM12/1018

EXAMINER
FAULKNER, D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1617 | 7 |

DATE MAILED: 10/18/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/132,593

Applicant(s)

Saebo et al

Examiner

Faulkner, D.

Group Art Unit

1617



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-8 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-8 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

D. Faulkner

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Detailed Action

35 U.S.C. 112 Rejection

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for animal feed rations for specified species (see, e.g., pages 21-25 in the specification), does not reasonably provide enablement for “conventional ingredients in a ration” typical for the species and age of an animal.” The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the rations to which it pertains for all ^{conventional} ~~converted~~ ingredients in the invention commensurate in scope with these claims.

It would require undue experimentation as the working examples in the specification are directed only to Pig. starter formulations, turkey broiler, hen formulations and dry dog foods. The examples do not recite all ingredients for all animals, e.g., humans, cats, fish, reptiles, or cattle. The person of ordinary skill in the art would not know how to make and use the claimed formulation to feed any animal species in “typical” way for its age without undue experimentation.

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Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "conventional" in claim 1 is a relative term which renders the claim indefinite. The term "conventional" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The term "typical" in claim 1 is a relative term which renders the claim indefinite. The term "typical" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Ingredients and ratios encompassed by the instant claims cannot be determined.

35 U.S.C. 103 rejection

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al., 5,554,646 and Cook et al., 5,428,072.

Cook '646 describes the administration of conjugated linoleic acid (CLA) to animals. The linoleic acids administered include 9,11, octadecadienoic and, 10, 12 octadecadienoic acid and salts. See abs. and col. 1 lines 39-60. See also examples 1-4.

The claims differ from applicants examples 1-4 because the claims require alkyl esters of conjugated linoleic acid.

Cook '646 describes the use of additional active forms of (CLA) to be administered to animals. The active forms include free acids, isomers, and active esters as well as other chemical derivatives and mixtures thereof. See col. 3 lines 60-col. 4 line 9, especially col. 4 lines 6-9.

The amounts include less than then 11, 13 octadecadienoic acid alkyl and the 8, 10 octadecadienoic acid alkyl esters. Egg phosphatides in an amount of 1-2% may be added to adjust toxicity. See col. 5 line 47. Most of the octadecadienoic acids are from the 9, 11 octadecadienoic acid form. See col. 4 lines, lines 48, col. 5, line 2.

In '572 Cook also describes the administration of conjugated linoleic acids being administered in a safe amount, particularly 9, 11-octadecadienoic acid and 10, 12 octadecadienoic acid and mixtures thereof. See the claims, especially claim 4.

It is appreciated that Cook is silent as to the amount of additional octadecadienoic acids in the compositions, specifically the 8, 11 and 11, 13 octadecadienoic acids. However, since the preferred amounts in applicants claims require less than 5 percent, this amount includes zero.

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Thus, Cooks' patents meet this limitation. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the particular feed compositions of Cook which include the administration of conjugated linoleic acids obtained from sun flower oil, for administration to animals. The motivation for utilizing the particular conjugated linoleic acids in this manner is provided by both Cook patents which describe the successful and safe administration of conjugated linoleic acids to various animals.

No claim allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diedra Faulkner whose telephone number is (703) 305-4043. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Don Adams, can be reached on (703) 308-0570. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

D.Faulkner:BL

09/30/99

M. Moey
PRIMARY EXAMINER
GROUP 1600